IN THE COURT OF APPEALS OF IOWA

No. 9-914 / 09-0193
Filed February 10, 2010

IN RE THE MARRIAGE OF DEBORAH CATHERINE RHINEHART AND RICHARD SCOTT RHINEHART

Upon the Petition of

DEBORAH CATHERINE RHINEHART,
Petitioner-Appellee,

And Concerning

RICHARD SCOTT RHINEHART,
Respondent-Appellant.

Appeal from the Iowa District Court for Woodbury County, David A. Lester, Judge.

Scott Rhinehart appeals from a district court ruling vacating portions of the judgment dissolving his marriage to Deborah Rhinehart and ordering a new trial. **AFFIRMED.**

Elizabeth A. Rosenbaum, Sioux City, for appellant.

Stanley E. Munger of Munger, Reinschmidt & Denne, L.L.P., Sioux City, for appellee.

Heard by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

EISENHAUER, J.

Scott Rhinehart appeals from a district court ruling vacating the property/debt/spousal support provisions of the judgment dissolving his marriage to Deborah Rhinehart and granting a new trial. He also appeals from the order denying his counterclaim regarding Deborah's IPERS account. We affirm.

I. Background Facts and Proceedings.

Deborah petitioned for dissolution of marriage in January 2003. After a September 2003 trial, the district court's final decree was entered in March 2004. The Iowa Supreme Court upheld the decree in October 2005. *In re Marriage of Rhinehart*, 704 N.W.2d 677 (Iowa 2005).

In December 2005, Deborah petitioned for relief claiming Scott committed extrinsic fraud in the underlying dissolution when he did not disclose the existence of at least two contingency fee cases during his June 30, 2003 discovery deposition or during the September 2003 trial. Alternatively, Deborah sought relief on the grounds of newly-discovered material evidence.

After the district court denied his motion to dismiss in April 2006,[1] Scott answered and counterclaimed in September 2006. In February 2007, the court granted Scott's motion to amend his counterclaim to include allegations Deborah committed extrinsic fraud in failing to disclose the actual value of her IPERS account and, alternatively, Scott sought relief on the grounds of newly-discovered material evidence. We note Scott never again urged the district court to dismiss

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[1] The court's April 2006 ruling resolved only the timeliness issue. Scott's additional dismissal issues were denied by the court's subsequent rulings on July 2006, and August 2006.

the case as untimely, either in his answers or at trial. However, the court again addressed the timeliness issue in its final ruling, concluding Deborah's petition included a common law cause of action in equity to vacate the decree due to fraud. It also noted the matter was tried on the issue of fraud and evidence was offered and admitted on the issue.

The district court ruled in favor of Deborah, vacated portions of the dissolution judgment, and granted a new trial. The court denied Scott's counterclaims. Additionally, the court directed the clerk of court "to seal from public viewing all deposition transcripts, and all trial exhibits . . . ." This appeal followed. Other than the timeliness issue discussed below, our review is de novo. Iowa R. App. P. 6.907 (2009).

II. Timeliness.

Scott argues the district court erred in denying his motion to dismiss Deborah's petition as untimely. We review a district court's ruling on a motion to dismiss for the correction of errors at law. *Estate of Ryan v. Heritage Trails Assocs*., 745 N.W.2d 724, 728 (Iowa 2008).

The dissolution decree dividing the parties' property was filed on March 18, 2004. Over a year later, on December 14, 2005, Deborah filed a petition in the dissolution case requesting the court "correct, vacate or modify final judgment" under Iowa Rule of Civil Procedure 1.1012 "or alternatively to grant a new trial" due to fraud or newly-discovered material evidence. Before filing an answer, Scott filed a motion to dismiss. He argued Deborah's petition was not timely because it was not filed within one year of the March decree. "A petition

for relief under Rule 1.1012 must be filed and served in the original action within one year after the entry of judgment." Iowa R. Civ. P. 1.1013(1). Assuming all pled facts to be true, the district court ruled Deborah's claims to vacate under Rule 1.1012 are time barred.

This did not end the court's analysis, however, because Iowa recognizes equitable exceptions to the one-year limitation:

> A party may institute a suit in equity seeking to vacate a judgment and obtain a new trial where, with reasonable diligence, he or she was not able to discover the fraud or other grounds for vacating the judgment within one year after the judgment.

Johnson v. Mitchell, 489 N.W.2d 411, 415 (Iowa Ct. App. 1992); *see Shaw v. Addison*, 236 Iowa 720, 729, 18 N.W.2d 796, 801 (1945) (holding petitioner may invoke the court's equitable powers after the time fixed in the statute has passed). The "other grounds" for relief in equity "must be found among those specified" in Rule 1.1012. *Johnson*, 489 N.W.2d at 415. Rule 1.1012(6) recognizes newly-discovered material evidence as a ground for relief.

The court found Deborah's father commenced an investigation into Scott's involvement in some publicized cases in April 2005, and, by July 2005, her father concluded Scott had not disclosed some contingency fee cases. Consequently, the court ruled Deborah met her burden to prove she was unable with reasonable diligence to discover Scott's non-disclosure of existing assets in his law practice within one year of the filing of the supplemental dissolution decree. We find no error in this conclusion.

Scott argues this common law approach to vacating a decree must be filed as a separate action in equity apart from the underlying action. *See City of*

Chariton v. J.C. Blunk Constr. Co., 253 Iowa 805, 820, 112 N.W.2d 829, 837 (1962). However, Scott cites no case where Iowa courts refuse to utilize equitable powers to vacate a judgment on the basis the petition seeking equitable relief (extrinsic fraud or "other grounds") was filed in the underlying equitable case. Rather, we agree with the district court: (1) Deborah's petition "contains allegations, which under Iowa's notice pleading would support a common-law cause of action to vacate;" and (2) "the appellate courts of this state have shown a willingness to consider this as an available remedy even though a party filed their petition to vacate in the original action." *See Tollefson v. Tollefson*, 137 Iowa 151, 152 114 N.W. 631, 632 (1908) (petition alleging fraud filed in original case); *see also Sorenson v. Sorenson*, 254 Iowa 817, 820, 824, 119 N.W.2d 129, 131, 133 (1963) (ruling on fraud allegations pled in answer to modification petition). We find no error.

III. Ethical Duty of Client Confidentiality.

Scott broadly asserts the trial court found he should have "openly discussed" two contingency cases (Cases A/B) while the dissolution was pending and claims his ethical duty to maintain client confidentiality prevented him from disclosing *any* information about Cases A/B. We disagree.

At the September 2003 dissolution trial experts for both Scott and Deborah testified to the valuation of Scott's law practice. Valuation includes a consideration of pending cases. Scott and his clients in Cases A/B signed contingency attorney fee contracts in January 2003.

During Scott's June 2003 pretrial deposition, he provided information about pending contingency fee cases, but did not disclose Cases A/B. Prior to Scott's deposition, Deborah's attorney recognized confidentiality was important and offered a proposal for maintaining the confidentiality of Scott's client information. During his deposition, however, Scott chose not to utilize Deborah's attorney's suggestions on "a way not to name names or name cases," stating: "I just think it's confusing. And since we have a confidentiality agreement[2] . . . ." During the deposition Scott discussed each case on his case list by name and stated he was providing every case he did any work on in the prior six months. We contrast this statement with Scott's actions: from July 15, 2002, until his June 2003 deposition, Scott wrote letters to the defense attorney on Cases A/B discussing his clients' claims. After the deposition, Scott and the defense attorney continued to exchange settlement and demand letters.

When Scott filed suit in Cases A/B in August 2003, he faxed copies of the petitions utilizing the plaintiffs' names to both the Sioux City Journal and the Des Moines Register. He did not fax this information to Deborah's attorney. Scott admitted he sent the faxes in order to generate publicity as a lawyer willing to handle similar cases.[3] However, Scott did not supplement his discovery to disclose even the *existence* of Cases A/B at any time before or during the

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[2] At Scott's deposition, Deborah and her attorney signed a "Nondisclosure Agreement" which stated the agreement was made "at the request of" Scott. Deborah and her attorney promised to keep the deposition testimony and documents confidential with the exception of disclosures to the court "and to any expert witness retained by Deborah for the purpose of the pending dissolution proceeding."

[3] After the publicity, Scott eventually represented numerous clients with similar claims against the same defendants, including two lawsuits filed on October 3, 2003, a few weeks after the dissolution trial.

September 11-12, 2003 dissolution trial. *See* Iowa R. Civ. P. 1.503(4) (supplementation of discovery). In fact, Scott did not disclose the existence of Cases A/B to his own valuation expert, including the fact he had made a July 2003 settlement demand two weeks after his deposition. Additionally, Scott did not disclose the defendants' August 8, 2003 responsive cash offer. Consequently, the parties' experts were not able to include Cases A/B in their valuations of Scott's law practice at trial. During the dissolution trial, Scott testified he had "laid all the cards on the table, [had not] hidden any assets or money . . . ."

After our de novo review of the record, we find no error. Scott's confidentiality concerns do not excuse his failure to disclose the existence of Cases A/B and utilize available court processes to protect client confidences.

IV. Extrinsic Fraud.

If fraud is the basis for seeking equitable relief, it is "essential that the fraud be extrinsic and collateral to the proceedings and issues in the original case." *Johnson*, 489 N.W.2d at 415. "Extrinsic fraud is some act or conduct of the prevailing party which has prevented a fair submission of the controversy." *Id*.

The district court specifically found Scott's testimony lacking in credibility. We give weight to the trial court's credibility determinations. *In re Marriage of Sullins*, 715 N.W.2d 242, 247 (Iowa 2006). Consequently, on our de novo review we conclude the record contains clear and convincing evidence Scott committed

extrinsic fraud. Scott's actions prevented a fair submission of the dissolution property/debt/spousal support issues. *See Johnson*, 489 N.W.2d at 415.

Scott nevertheless argues: "The most compelling factor . . . [showing] no extrinsic fraud occurred is the fact that he filed [civil lawsuits in Cases A/B] before his dissolution trial started." We contrast Scott's current argument with his July 2006 court filing stating he had not been contacted, retained, and authorized to commence litigation in this type of case before September 13, 2003. As the district court observed: "Scott's behavior certainly supports the position Deborah has maintained throughout these proceedings that Scott lacks credibility, and is willing to say whatever he thinks will benefit him no matter how unreasonable it is." We agree with and adopt the district court's resolution of this argument.

> The transparency of the argument becomes readily evident, however, when contrasted against the laundry-list of excuses Scott has offered up in the present case as to why he simply did not disclose the existence of [Cases A/B] either at the time of his discovery deposition, at the time he filed the lawsuits . . . or during his testimony at trial. Moreover, Scott's argument overlooks his statutory duty to fully disclose his financial status . . . as well as his duty to supplement his earlier discovery responses; . . . especially, where, as here, it would have become readily obvious to Scott that no one knew of the filing of [Cases A/B] because no mention was ever made of them either prior to or during the underlying divorce trial.

V. Deborah's IPERS Account.

Scott filed a counterclaim alleging Deborah committed extrinsic fraud by failing to disclose the actual value of her IPERS account. Because this claim was filed beyond the one-year limitation in Rule 1.1013(1), Scott must prove his entitlement to the common law equitable relief discussed above. After our de novo review, we agree with the district court's conclusion Scott failed to prove

Deborah had knowledge of the statement's falsity and intent to deceive. *See Cornell v. Wunschel*, 408 N.W.2d 369, 375 (Iowa 1987).

Deborah provided her two-page IPERS statement to her dissolution attorney. Deborah's attorney intended to provide both pages of the IPERS statement in response to Scott's interrogatories. However, when Deborah's attorney prepared valuation affidavits for trial, she utilized the investment amount on the first page, which did not include the State of Iowa's contribution. Deborah did not think the valuation was in error because the attorney's valuation corresponded to the IPERS values used by Scott over the years when he prepared annual summaries of family investments for discussion. Accordingly, the value placed on the account did not conflict with the values Scott discussed with Deborah for years when analyzing the family financial position. We agree with and adopt the district court's analysis:

> There is absolutely no evidence in the record establishing Deborah, or for that matter Scott, [Deborah's attorney, or Scott's attorney] knew the represented value was incorrect, and that an actuary was required to compute the actual current value of [Deborah's] IPERS account. Therefore, the evidence fails to establish Deborah either knowingly or recklessly represented what she believed to be the current value of her IPERS account as of the date of trial.

AFFIRMED.